

(Draft – Awaiting Formal Approval)

**MINUTES OF THE
COMMISSION ON FEDERALISM**

Tuesday, July 2, 2013 – 10:00 a.m. – Room 450 State Capitol

Members Present:

President Wayne L. Niederhauser,
Cochair Speaker Rebecca D.
Lockhart, Cochair Sen. Mark B.
Madsen Rep. Ken Ivory Rep. Brian S.
King Rep. Ryan D. Wilcox

Members

Absent: Sen.
Karen Mayne

Staff Present:

Mr. Jerry D. Howe, Managing Policy Analyst
Mr. Nathan W. Brady, Policy Analyst Mr.
Robert H. Rees, Associate General Counsel
Ms. Samantha Coombs, Legislative
Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Commission Business

Chair Niederhauser called the meeting to order at 10:14 a.m. Sen. Mayne was excused from the meeting.

2. Opening Statements

Speaker Lockhart emphasized the importance of the commission and its study of federalism; specifically, what it means, the powers and rights of the sovereign states, and the implications of federalism today.

Chair Niederhauser said that the concentration of power in one place is not a good model of government and that power should be divided. He continued that, over time, the federal government has expanded its jurisdiction of power, and he encouraged other states to join Utah in identifying the appropriate jurisdiction of the states.

3. Committees of Correspondence and the Tenth Amendment

Congressman Rob Bishop presented an overview of the Tenth Amendment and how its interpretation has evolved. He discussed dual sovereignty and the conceptual paradigm shifts that have occurred regarding federalism and how it affects policy today. He provided suggestions on how the state Legislature could work with Utah's federal delegation to accomplish Utah's goals as well as how the Legislature can assert its authority. Congressman Bishop applauded the Legislature for providing arguments containing a legal, political, and cultural component, which lead to successful solutions for the states.

Sen. Madsen asked how lawmakers can connect the rhetoric of adhering to federalism principles with public policy actions.

Congressman Bishop responded that federal lawmakers are focused on solutions and often do not consider if solving the problem on a state level, rather in Congress, is the appropriate course of action.

Rep. Ivory acknowledged the daunting task of trying to address issues pertaining to federalism and asked how the Legislature can quicken its efforts to slow down federal consolidation of power.

Rep. Wilcox inquired about the areas of concern, aside from land and education that Congressman Bishop's colleagues back east would be interested in partnering with state legislators to address.

Chair Niederhauser emphasized that the Legislature and Utah's federal delegation should have similar interests and goals and encouraged the Legislature to reach out regularly to the federal delegation. He also explained that Utah should consider partnering with other states in asserting greater authority from the states to the federal government.

4. Legislative Intent

Rep. Ivory briefed the commission on the legislative intent of 2013 H.B. 131, "Constitutional and Federalism Defense Act," and distributed "Utah Commission on Federalism" to members of the commission. Rep. Ivory suggested the commission study the states' police power, the checks and balances between the states and federal government, and the rights, roles, and powers of the states in the broader context of federalism. He referred to the booklet "Where's the Line: How States Protect the Constitution" and emphasized the importance of restoring a balanced governing partnership between the states and federal government.

Sen. Madsen explained his intent for supporting H.B. 131 "Constitutional and Federalism Defense Act." He encouraged further discussion by the commission on the police powers of the federal government.

5. Federalism and the Balance Between State Sovereignty and Federal Preemption

Mr. Rees provided context of the memorandum prepared by Mr. Michael Curtis, Law Clerk, Office of Legislative Research and General Counsel, which addresses the areas of state sovereignty.

Mr. Curtis presented "Memorandum: Federalism and the balance between state sovereignty and federal preemption" and discussed absolute state sovereignty, federal inducements, and powers strictly reserved to the federal government.

Rep. King explained that historical context is an important factor when discussing the issues of federalism. He expounded upon the powers granted to the federal government as found in the Constitution.

Rep. Ivory inquired as to what the best approach for state legislators would be to work with staff in addressing the concerns of the commission.

Mr. Rees explained the role of the legislative staff in supporting the state legislators.

Speaker Lockhart suggested that there may need to be further discussion on the role of the staff and the use of constitutional notes.

6. Outreach with Other States – Committee Discussion

Chair Niederhauser explained that it is paramount that other states be involved in the discussion on federalism.

Speaker Lockhart recommended the commission send letters to other state legislatures introducing the members of the commission, outlining the commission's goals and purposes, and indicating that future communications from the commission is forthcoming.

Sen. Madsen suggested getting on the agenda at the National Conference of State Legislatures and the American Legislative Exchange Council to further discuss the issue of federalism with a wider audience. Rep. Ivory recommended communicating with other states to divide "the elephant" and focus on different aspects of the issue so that the task is not so daunting.

MOTION: Rep. Wilcox moved that chairs work with staff to draft a letter that would be sent to the other state legislatures explaining the goals of the commission. The motion passed unanimously.

7. Other Items/Adjourn

Sen. Madsen asked about the date for the next commission meeting.

Speaker Lockhart suggested the commission not meet earlier than the end of August.

MOTION: Sen. Madsen moved to adjourn the meeting. The motion passed unanimously.

Chair Niederhauser adjourned the meeting at 11:50 a.m.